IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

MARIA QUINTERO,	§	
Plaintiff,	& & &	
VS.	§	SA-19-CV-00572-FB
ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, DONALD BATCHELOR,	00 00 00 00 u	
Defendants.	\$ \$	

ORDER

Before the Court is the above-styled and numbered cause of action, which was referred to the undersigned on June 5, 2019 for all pretrial proceedings [#8]. On August 28, 2019, the parties appeared, through counsel, at an initial pretrial conference. At the conference, the Court reviewed the pending motions, recent filings, and the parties' joint scheduling recommendations and Rule 26(f) report, and confirmed that there is subject matter jurisdiction over this case.

Defendants Allstate Vehicle and Property Insurance Company ("Allstate") and Donald Batchelor ("Batchelor") removed Plaintiff's state-court Petition to this Court on May 28, 2019 based on diversity jurisdiction but failed to identify the citizenship of Batchelor in their removal filings. The Court raised the question of the parties' citizenship at the conference, and counsel for Allstate confirmed that Batchelor is a citizen of Georgia. Accordingly, there was complete diversity among the parties at the time of removal, and this Court has diversity jurisdiction over this action. *See* 28 U.S.C. § 1332.

Pending before the Court are two motions: Defendant Allstate Vehicle and Property Insurance Company's Motion for Partial Dismissal under Rule 9(b) and 12(b)(6) [#4] and

Defendant Donald Batchelor's Motion for Dismissal under Rule 9(b) and 12(b)(6) [#13]. The record reflects that on August 27, 2019, Plaintiff and Defendants filed a Stipulation of Dismissal with Prejudice as to Donald Batchelor [#17]. Accordingly, the Court will direct the Clerk to terminate Batchelor from this lawsuit and will dismiss as moot Batchelor's motion to dismiss. As to Allstate's motion to dismiss, Allstate agreed at the hearing that Plaintiff should have the opportunity to replead with more specificity because his Original Petition was filed in state court, where pleadings are subject to more lenient pleading standards. The Court will therefore order Plaintiff to file an amended pleading that complies with the Federal Rules of Civil Procedure within two weeks of this Order. The Court will also dismiss Allstate's motion to dismiss without prejudice to filing another motion to dismiss based on Plaintiff's amended pleading.

IT IS THEREFORE ORDERED that the District Clerk terminate Defendant Donald Batchelor from this lawsuit.

IT IS FURTHER ORDERED that Defendant Donald Batchelor's Motion for Dismissal under Rule 9(b) and 12(b)(6) [#13] is **DISMISSED AS MOOT**.

IT IS FURTHER ORDERED that Plaintiff file an amended pleading in conformity with the Federal Rules of Civil Procedure on or before September 12, 2019.

IT IS FINALLY ORDERED that Defendant Allstate Vehicle and Property Insurance Company's Motion for Partial Dismissal under Rule 9(b) and 12(b)(6) [#4] is **DISMISSED** WITHOUT PREJUDICE.

SIGNED this 29th day of August, 2019.

ELIZABETH S. ("BETSY") CHESTNEY UNITED STATES MAGISTRATE JUDGE